

QUESTIONNAIRE**1. The Actual Administration and Use**

About your organization or the representative organization in your country.

(1) Provide the definition and kinds of ADR.

ADR is commonly defined as dispute resolution involving a structure process with third party intervention which does not lead to a legally binding outcome imposed on the parties.

The most commonly used ADR includes:

1. Conciliation
2. Mediation
3. Early Neutral Evaluation
4. Med-Arb

(2) Provide the number of arbitration and mediation cases accepted and disposed of, with a breakdown as to type, if possible.

CIETAC Arbitration Cases:

In recent years, along with the perfection of CIETAC's arbitration system, the annual growth of CIETAC's caseload is phenomenal:

YEAR	CASES ACCEPTED	CASES CONCLUDED
1993	486	294
1994	829	574
1995	902	875
1996	778	797
1997	723	766
1998	678	736
1999	669	706
2000	633	738
2001	731	742

These cases involved the disputes over general sales of goods, equity and contractual joint ventures, processing and compensation trade, construction contracts, real estate, loans, insurance, barter trade and trademark transfer and so on. The number of cases in respect of equity and contractual joint ventures and real estate had a remarkable increase.

In 1992, the number of international cases admitted by CIETAC outstripped for the first time LCIA, SCC and AAA and ranked second, just behind the ICC Court of International Arbitration.

CCPIT Conciliation Cases:

YEAR	CASES ACCEPTED	CASES CONCLUDED
1993	209	162

1994	243	175
1995	231	167
1996	267	189
1997	288	236
1998	292	256
1999	312	249
2000	325	267
2001	340	289

(3) Generally, what is the frequency of hearing of other procedure and how long is the elapsed time for an arbitration award or a mediation? Are the answers different for different types of cases?

CIETAC Arbitration:

In accordance with the present CIETAC Arbitration Rules 2000, CIETAC arbitration procedures include four types. They are Foreign-related Procedure vs. Domestic Procedure and Ordinary Procedure vs. Summary Procedure. With regard to different types of cases, the time limit for the arbitrators to render their award is also different.

Generally, oral hearings are conducted in the course of arbitration. However, the arbitration tribunal may examine the case and make an award on the basis of documents only at the request of the parties or with their consent, and with the arbitration tribunal’s confirmation that oral hearings are unnecessary, or in case of Summary Procedure.

The date of oral hearing shall be fixed by the arbitration tribunal after consultation with the Secretariat of the Arbitration Commission, and shall be communicated to the parties 30 days (foreign-related case) or 15 days (domestic case) before the date of the hearing. However, the notice of the date of hearing subsequent to the first hearing is not subject to the 30-day or 15-day time limit.

A party having justified reasons may communicate his request to the Secretariat of the Arbitration Commission for a postponement of the date of the hearing 12 days (foreign-related case) or 7 days (domestic case) before the date of the hearing. And the arbitration tribunal shall decide whether to postpone the hearing or not.

The hearing shall be held in the place where the case is admitted, or in the place where the parties agreed.

The parties shall attend the hearing. Should one of the parties fail to appear at the hearing, the arbitration tribunal may proceed with the hearing and make an award by default.

The case may be conciliated in the process of arbitration. The combination of arbitration with conciliation is a distinctive feature of arbitration in China. If the conciliation is successful, the parties may apply for withdrawing the case. Otherwise, the arbitration tribunal shall make a consent award in accordance with the contents of the parties’ settlement agreement.

CCPIT Conciliation:

The time needed to conciliate a case differs depending on the nature and complexity of a case. However, as compared to arbitration, the time is much shorter. Normally, a conciliation case can be settled, if both the parties in dispute are eager to resolve their dispute amicably, one to two months.

(4) How many persons, in each field, are listed as candidates or applicants? (Aside from lawyers, what are the qualifications and occupations of such persons?)

CIETAC Arbitration:

CIETAC has a team of arbitrators and secretaries with professional knowledge and ethics. The current Panel of Arbitrators contains a total of 518 arbitrators, among which 174 arbitrators are from Hong Kong, Macao, Taiwan and foreign countries.

In accordance with The Arbitration Act of the People's Republic of China of 1994, an arbitrator shall meet one of the following conditions:

- (1) has been engaged in arbitration work for 8 years;
- (2) has worked as a lawyer for 8 years;
- (3) has served as a judge for 8 years;
- (4) has been engaged in legal research work or legal education work and has a senior title;
- (5) has acquired the knowledge of law engaged in the professional work of economy and trade, ect. and possessed a senior title or attained an equivalent professional title

CCPIT Conciliation:

The current Panel of Conciliators contains a total of 281 conciliators, the vast majority of whom are Chinese.

(5) What requisites are necessary to be listed as a candidate? (For example, are certain specified qualifications, career records and specializations necessary?) Who decides this?

CIETAC Arbitrators:

As pointed out in question (4), In accordance with The Arbitration Act of the People's Republic of China of 1994, an arbitrator shall meet one of the following conditions:

- (1) has been engaged in arbitration work for 8 years;
- (2) has worked as a lawyer for 8 years;
- (3) has served as a judge for 8 years;
- (4) has been engaged in legal research work or legal education work and has a senior title;
- (5) has acquired the knowledge of law engaged in the professional work of economy and trade, ect. and possessed a senior title or attained an equivalent professional title.

CIETAC implements the Chairman Meeting system. The Chairman Meeting is the highest authority of the Commission. Under the Chairman Meeting, there is an Arbitrator Accreditation Committee which is responsible for the acceptance and examination for the applications for CIETAC Arbitrator Panel and reports to the Chairman Meeting which shall make the decision finally.

CCPIT Conciliators:

The Conciliation Center selects its Panel based on their experience, reputation and proven ability to adjudicate cases and settle disputes. Our panel has experience in all case types with specialized knowledge ad skill in resolving commercial disputes such as commercial contracts, investment, security, intellectual property, technology transfer, real estate, construction, communication, insurance, etc.

(6) Have policies been devised to improve the quality of arbitrators and mediators?

CIETAC Arbitrators:

CIETAC has established an Annual Training Program for all CIETAC arbitrators, under which all

arbitrators or candidate arbitrators must participate in one-week professional training envisaged by CIETAC and held in September annually so that ensure and improve the quality of the arbitrators.

CIETAC has made an Ethical Rules of Arbitrators to regulate the arbitrators' behavior in the conduct of arbitration cases. Arbitrators shall examine and hear cases independently and fairly, and fulfill their duties prudently and diligently.

On the other hand, according to the Chinese arbitration Act 1994 and CIETAC Arbitration Rules 2000, any selected or appointed arbitrator having a personal interest in the case shall himself disclose such circumstances to the Arbitration Commission and request a withdrawal from his office. A party may make a request in writing to the Arbitration Commission for the removal of an arbitrator from his office, if the party has justified reasons to suspect the impartiality and independence of the arbitrator.

CCPIT Conciliators:

The Conciliation Center has established a training system under which two-day long trainings are held on irregular basis. Until now, from 1995, 7 training seminars have been held.

(7) How is the compensation for arbitrators and mediators determined? Also, what are the actual amounts?

CIETAC Arbitrators:

By CIETAC current practice, when determining the compensation for arbitrators, the following factors should be taken into consideration:

- (1) the arbitration fees collected
- (2) the nature and complexity of the case
- (3) the time arbitrator has spent on the case
- (4) the arbitrator's prudence and diligence

The actual amounts shall depend on the above factors.

CCPIT Conciliators:

The determination of compensation of conciliators is basically the same as the above for CIETAC arbitrators.

(8) When you have a procedure that transfers from the arbitration to the mediation, or from the mediation to the arbitration, do the members of panel change?

Combination of Arbitration with Conciliation:

The combination of arbitration with conciliation is a salient feature of CIETAC arbitration. This procedure has been formulated since 1956 when CIETAC was founded. Combining the advantages of arbitration and conciliation, the tribunal may conciliate the case before or after the commencement of the arbitration proceedings if the parties so desire. If the conciliation fails, the tribunal will continue the arbitration proceedings in accordance with the Arbitration Rules until the final award is issued. The key is that the arbitrators can perform the conciliator's function, if necessary, in the same proceedings, i.e. the arbitration proceedings.

Moreover, CIETAC Arbitration Rules 2000 introduces another provision concerning combination of arbitration with conciliation. Under the Arbitration Rules 2000, the parties may submit their disputes to a third party for conciliation directly so as to get an amiable settlement. They may also submit their settlement agreement to CIETAC for arbitrate by the arbitration agreement concluded between the both parties so that the settlement agreement can be recorded in the form of an arbitral award. Once the

settlement agreement was entered into an award, it is enforceable at law. In case that one party does not execute the award voluntarily, the other party may seek enforcement of the award to a competent court, either domestic or foreign. This is a significant improvement to the system of combination of arbitration with conciliation.

Transfer Conciliation to Arbitration:

There are two ways of transferring conciliation to arbitration.

One is when conciliation of a case fails, the parties may reach a arbitration agreement by which the dispute may be referred to arbitration. The other is that when a conciliation of a case succeeds and the parties have reached a settlement agreement, an arbitration clause may be put in the settlement agreement, providing that any dispute arising out of the enforcement of the settlement agreement may be referred to arbitration.

Besides, there is a recently developed way of converting a settlement agreement out of conciliation into arbitration award. That is to say, when parties conclude a settlement agreement, they may reach an arbitration agreement, providing that the dispute may be referred to CIETAC and an arbitration tribunal may render an arbitral award strictly following the contents of the settlement agreement. This special process significantly saves time, energy and money, for normally, an arbitral award rendered thereby takes less than one month and the arbitration fee can be collected at much lower rate.

2. Relationship with the Court System

Please show any act or law related to the below topics.

(1) When a case is instituted, does the court refer the matter to arbitration or mediation? If so, is it referred to a private sector organization or to an organ of the court? (Here and below, if there is a relevant law or regulation, please provide the text.)

Arbitration:

If the parties have concluded an arbitration agreement and one party institutes an action in a People's Court, the People's Court shall not accept the case, unless the arbitration agreement is void (Article 5 of the Chinese Arbitration Act 1994). In this case, the People's Court shall refer the case to the independent arbitration commission designated by the parties for arbitration.

Conciliation:

The party's agreement to conciliate or mediate does not exclude their rights to bring a legal action to court, that is to say, any party under conciliation is entitled to retreat from conciliation proceedings and go to court, if he is not satisfactory with the conciliation process or has any other reasons.

(2) In a case where the matter is referred to a private sector organization, how is the liability for the costs of the arbitration or mediation allocated?

Arbitration:

If the case is referred to the independent arbitration commission designated by the parties for arbitration, the arbitration fees shall be paid by the applicant in advance and be determined by the arbitral tribunal in the award finally.

Conciliation:

Same as the above.

(3) Is there court supervision? Also, is there some sort of cooperation between the arbitration or

mediation organization and the court? How does the court participate? (For example, does it cooperate in the examination of evidence, in the provision of information or the like?)

Arbitration:

The court supervision over arbitration is manifestly embodied in the setting aside proceedings and enforcement proceedings instituted by one of the parties. If the concerned award is involved with the statutory grounds for setting aside or refusal for enforcement, the court may decide to set aside or refuse enforcement the award after examination (Article 58, 63, 70 and 71 of the Chinese Arbitration Act 1994). The People's Court also has the final right to decide the validity of the arbitration agreement between the parties (Article 20 of the Chinese Arbitration Act 1994). On the other hand, the People's Court also exchanges the relevant information with the arbitration commission in the setting aside or enforcement proceedings.

The cooperation between the court and the arbitration is mainly concentrated on the preservative measures taken during the arbitration proceedings. In the arbitration proceedings, the one of the parties intends to apply for the preservative measures for the evidence or property, he may apply to the arbitration commission which is responsible for transferring the party's application to the competent court for examination. The court shall decide whether or not to allow the preservative measures. (Article 46 and 68 of the Chinese Arbitration Act 1994).

Conciliation:

No direct court supervision is there on conciliation process, chiefly because the process and result of conciliation are under control of the parties, unless there is a violation of the mandatory provisions of law.

(4) In the event that mediation ends in failure, how is the matter disposed of? For example, how is the issue of extinctive prescription (similar to the statute of limitations) handled?

CIETAC Arbitration:

As far as the combination of arbitration with conciliation is concerned, if the conciliation fails, the tribunal will continue the arbitration proceedings in accordance with the Arbitration Rules until the final award is issued.

Should conciliation fails, any statement, opinion, view or proposal which has been made, raised, put forward, acknowledged, accepted or rejected by either party or by the arbitration tribunal in the process of conciliation shall not be invoked as grounds for any claim, defense and/or counterclaim in the subsequent arbitration proceedings, judicial proceedings or any other proceedings.

CCPIT Conciliation:

If conciliation fails, the parties are free to resort to any subsequent legal proceedings. The conciliation process is regarded as a reason for the suspension of the statute of limitation.

(5) How is the enforceability of the arbitration award or the mediation agreement ensured? Does the court participate in that process?

Arbitration Award:

The parties must automatically execute the arbitral award within the time limit specified in the arbitral award. According to the CAA 1994 and the CCPL 1991, in case one party fails to execute the arbitral award, the other party may apply to the competent court for enforcement. As to domestic cases, one party may apply to the Basic-level People's Court in the place where the residence or the property of the losing party is located for enforcement of the award. As to foreign-related cases, if the resident or the properties of the losing party is located within the territory of China, the other party may apply to the Intermediate People's Court in the place where the residence or the property of the losing party is located for enforcement of the award; if the residence or the property of the losing party is located outside China, and the country in which the residence or the property of the losing party is located has already acceded to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("the 1958 New York Convention"), the other party may apply to the competent court in that

country for enforcement in accordance with the Convention. Whenever one party applies for enforcement to the competent foreign court, he shall submit written application for enforcement together with the arbitration agreement and the original copy of arbitral award and the corresponding translation copy. The 1958 New York Convention became effective in China on April 22, 1987. The arbitral award made by CIETAC can be enforced by the competent court of more than 140 countries and regions in accordance with the Convention.

In order to avoid the undue refusal for enforcement, the Supreme People's Court of the P. R. China in 1995 has issued the corresponding judicial interpretation, by which the pre-reporting system concerning the enforcement of the international award has been established. According to this official document, any People's Court seeking to refuse enforcement of an international award or a foreign award must first obtain approval from the superior people's court in the same jurisdiction. Any superior court that decides to uphold a lower court's refusal to enforce an international award or a foreign award must, in turn, report its decision to the Supreme People's Court prior to finalizing the decision to refuse enforcement. By issuing this official document, the PRC has established an internal control mechanism by which undue refusal for enforcement has been effectively controlled.

Conciliation Agreement:

Conciliation settlement reached by and between the parties themselves or under conciliation proceeding is unenforceable, that is to say, a court having jurisdiction over an enforcement of legal document shall not enforce the substantive obligations stipulated in the conciliation agreement, although the agreement can be used as evidence in any subsequent legal proceedings.

3. Particular Issues

(1) Have special rules been established for cases related to intellectual property rights? For example, is it possible to arbitrate with respect to the validity of a patent?

By issuing the CNNIC Keyword Dispute Resolution Policy (KWDRP) in 2001 and CNNIC Domain Name Dispute Resolution Policy (CNDRP) in 2002 and authorizing CIETAC as the dispute resolution service provider, China Internet Network information Center (CNNIC) has established Chinese Domain Name Dispute Resolution System in order to resolve the conflicts between the Internet domain Names and intellectual property.

(2) Are there disputes when arbitration is rejected?

As far as the Domain Name Dispute Resolution System is concerned, up to now, no case has been submitted to the court litigation even if the claim has been rejected by the panel.

(3) Is there a specialized arbitration or mediation system (or rules) for computer software and the like?

Not yet except for the Domain Name Dispute Resolution System. Currently, computer software disputes are mainly resolved through court litigation.

(4) In the event of a dispute concerning computer software, how is a decision made as to grasping the facts of the technological issues? How are qualified persons selected for that purpose?

Non Applicable.

(5) What measures are in place for the protection of secrets? (For example, are there methods of controlling records, limiting the scope of disclosure to agents, and so on?)

Non Applicable.

(6) Have some measures been conceived to promote prompt settlements?

With regard to the domain name dispute resolution, CIETAC has established its dedicated website and can deal with the procedural matters concerning the case on line so as to promote the prompt settlement of the domain name disputes.

(7) How is ADR publicized? How can potential users learn about your ADR organization's system?

The measures we adopted for our ADR publicity mainly include:

- (1) daily case-handling work and high-quality award;
- (2) news report in the international or domestic newspaper;
- (3) articles in the international or domestic magazine;
- (4) seminars and conferences;
- (5) training program;
- (6) TV and other media

(8) What kind of dispute is suitable for the online ADR? How about the actual use?

Nowadays, by arbitrating the domain name disputes, CIETAC has started its online ADR practice. Besides, the computer software disputes, the intellectual property disputes in cyberspace as well as e-Commerce disputes are all suitable for online ADR.

4. Please attach any court precedents related to the above topics.

(end)